

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine White	Team: Squad #13	CCRB Case #: 202203275	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/21/2022 6:04 PM	Location of Incident: East 125th Street "4/5/6" subway station	Precinct: 25	18 Mo. SOL 11/21/2023	EO SOL 11/21/2023	
Date/Time CV Reported Mon, 05/23/2022 1:42 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 05/23/2022 1:42 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Sun Hu	12599	956744	TD 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Sabbir Ahmed	11924	971788	TD 4

Officer(s)	Allegation	Investigator Recommendation
A. PO Sun Hu	Abuse: Police Officer Sun Hu threatened § 87(2)(b) with the use of force.	
B. PO Sun Hu	Discourtesy: Police Officer Sun Hu spoke discourteously to § 87(2)(b)	
C. PO Sun Hu	Abuse: Police Officer Sun Hu threatened § 87(2)(b) with the use of force.	

## Case Summary

On May 23, 2022, § 87(2)(b) reported the following complaint to the CCRB online (**BR01**).

On May 21, 2022, at 6:04 p.m., § 87(2)(b) entered the 125<sup>th</sup> Street 4/5/6 subway station in Manhattan and stood in front of the turnstiles. Police Officer Sun Hu of Transit District 04 allegedly said, “Hey man, you can’t just stand in front of the turnstile, my man. You’re lucky that I didn’t use my Taser on you” (**Allegation A: Abuse of Authority – Threat of Force**, § 87(2)(g) § 87(2)(b) held the subway emergency exit gate open, allowing multiple civilians to enter the station without paying. PO Hu told § 87(2)(b) to leave the station. § 87(2)(b) said he paid his fare, and PO Hu said, “Tough shit” (**Allegation B: Discourtesy** – § 87(2)(g) § 87(2)(b) turned toward PO Hu, and then PO Hu drew his Taser (**Allegation C: Abuse of Authority – Threat of Force**, § 87(2)(g) The officers allowed § 87(2)(b) to walk down to the platform.

No arrest or summons resulted from this incident.

The investigation obtained MTA video footage of this incident (**BR02-16, summarized at BR17**) and BWC video footage of this incident (**BR18-19, summarized at BR20**).

## Findings and Recommendations

### **Allegation (A) Abuse of Authority: Police Officer Sun Hu threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) testified (**BR21**) that he entered the station and stood in front of the turnstile for several minutes while waiting for his train. PO Hu and PO Sabbhir Ahmed of Transit District 04 stood at the MTA clerk’s booth. When § 87(2)(b) saw his train arrive, he paid the fare and walked through the turnstile. PO Hu approached the turnstile and said, “Hey man, you can’t just stand in front of the turnstile, my man. You’re lucky that I didn’t use my Taser on you,” then returned to the MTA booth. § 87(2)(b) then opened the emergency gate from inside the turnstiles and addressed the officers.

MTA footage of this incident from inside the turnstiles (**BR16, runtime 00:00-04:59**) captures § 87(2)(b) speaking with PO Hu and PO Ahmed through the fence separating the paid and unpaid areas for about thirty seconds. PO Hu and PO Ahmed walk away. § 87(2)(b) opens the emergency exit gate and holds it open while speaking with the officers, now standing at the MTA booth. Six civilians enter the emergency exit gate while he holds it open. The officers approach § 87(2)(b) and appear to gesture for him to exit the subway system. This footage has no audio.

MTA footage of this incident from outside the turnstiles (**BR12, runtime 27:25-34:45**) captures § 87(2)(b) entering the station and standing in front of the turnstiles. PO Ahmed and PO Hu enter the station through the turnstiles and interact with § 87(2)(b) in front of the turnstiles for about one minute, then walk away. § 87(2)(b) swipes through and enters the station, and then officers approach the fence separating the paid and unpaid areas and interact with § 87(2)(b) About thirty seconds later, the officers walk away from the fence. § 87(2)(b) then opens the emergency exit gate and stands in the doorway. Eventually, officers approach and enter through the gate. This footage has no audio.

PO Ahmed and PO Hu’s BWC footage (**BR18-19**) does not capture audio of officers’ initial conversations with § 87(2)(b) as they do not activate their BWCs until § 87(2)(b) closed the gate and entered subway system.

PO Hu testified (BR22) that when he and PO Ahmed entered the station at rush hour, § 87(2)(b) was already holding the emergency gate open. § 87(2)(b) held the gate open for approximately three minutes, and multiple individuals entered the subway system through the open gate without paying. PO Hu and PO Ahmed approached § 87(2)(b) and told him that he could not hold the door open. PO Hu did not remember having any conversation about his Taser with § 87(2)(b) before he drew it (see **Allegation C**). PO Hu did not verbally threaten to use his Taser against § 87(2)(b). PO Hu was shown the MTA footage and stated that it did not refresh his memory of the incident.

PO Ahmed's testimony (BR23) was generally consistent with PO Hu's.

§ 87(2)(b) alleged that PO Hu approached him before he walked through the turnstile and said, "Hey man, you can't just stand in front of the turnstile, my man. You're lucky that I didn't use my Taser on you." PO Hu did not remember speaking to § 87(2)(b) before he opened the emergency gate, and both he and PO Ahmed denied that PO Hu said this. Video footage captures officers speaking with § 87(2)(b) before he walked through the turnstile and before he opened the emergency gate but has no audio. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Discourtesy: Police Officer Sun Hu spoke discourteously to § 87(2)(b)**  
**Allegation (C) Abuse of Authority: Police Officer Sun Hu threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) testified that he held the emergency gate open and argued with PO Hu for several minutes. Multiple uninvolved civilians entered the subway without paying through the gate. The MTA booth clerk, PO Hu, and PO Ahmed all told § 87(2)(b) that he could not hold the gate open. PO Hu and PO Ahmed instructed § 87(2)(b) to enter the subway or leave the station. § 87(2)(b) continued holding the gate open and arguing. PO Hu and PO Ahmed walked towards § 87(2)(b) who entered through the gate and walked towards the stairs leading to the train platforms. PO Hu and PO Ahmed followed § 87(2)(b) through the gate. PO Hu drew his Taser with his left hand and pointed it at § 87(2)(b) stomach for about ten seconds.

PO Hu testified that he and PO Ahmed approached § 87(2)(b) who let go of the gate and entered the station. The officers followed § 87(2)(b) who argued with them just inside the turnstiles. PO Hu decided to eject § 87(2)(b) from the station for holding the gate open and told § 87(2)(b) to leave. § 87(2)(b) took a few steps towards the turnstiles, as if to exit, then suddenly turned around, said something "combative" like, "Why are you guys talking to me? I didn't do anything," and took a few steps towards the officers. § 87(2)(b) was angry, raised his voice, and spoke loudly. PO Hu felt threatened by § 87(2)(b) demeanor and sudden turn, and believed that § 87(2)(b) might jump on, push, or otherwise assault the officers. PO Hu's concern was elevated as PO Ahmed was a "brand new" officer, and he was also worried about commuters' safety. PO Hu drew his Taser with his left hand, held it behind his back, and pointed it at the ground because he wanted to have it ready if he had to use it. § 87(2)(b) asked PO Hu why he was holding his Taser; PO Hu said that it was "for safety." A few seconds later, PO Hu reassessed the situation, realized that the threat had diminished, and holstered his Taser. PO Hu did not point his Taser at § 87(2)(b).

PO Ahmed testified that PO Hu drew his Taser for safety reasons and pointed it down at the ground, then holstered it within two seconds. PO Hu did not point his Taser at § 87(2)(b) stomach for ten seconds.

PO Hu's BWC video (**BR18, runtime 00:59- 01:38**) captures PO Hu and PO Ahmed approach § 87(2)(b) as he is holding open the emergency gate. At 01:03, PO Hu says, "Sir, you can't hold the door." § 87(2)(b) enters the paid area of the station through the gate, and the officers follow him and tell him to leave the station. § 87(2)(b) argues with the officers for approximately twenty seconds. PO Hu tells § 87(2)(b) "Go outside, go outside." § 87(2)(b) says, "I just paid for this." PO Hu says, "Tough shit."

PO Hu reviewed this portion of his BWC, then stated that he did not remember saying "Tough shit" and that he could not hear himself say this on the audio recording. After reviewing the video again at a slower speed, PO Hu stated that he heard himself say, "What's the problem," then said, "But if you say I said ["tough shit"], if you guys heard it, that's fine. I just really don't recall." PO Hu ultimately reiterated that he did not recall saying, "Tough shit," but he noted that he was not disputing that he made this statement.

PO Ahmed's BWC video (**BR19, runtime 00:00-01:04**) opens with § 87(2)(b) holding the emergency gate open while speaking with officers. At 00:31, the officers walk toward § 87(2)(b) who enters the subway station and walks towards the stairs. The officers follow § 87(2)(b) through the gate, and PO Hu guides § 87(2)(b) towards the turnstiles and emergency exit. § 87(2)(b) walks towards a turnstile, and PO Hu puts his hand on his Taser. § 87(2)(b) enters the turnstile and stands directly in front of the turnstile's rotating tripod without exiting. An unidentified male civilian stands directly in front of him on the other side of the turnstile's rotating tripod and says, "I'll pay for it." § 87(2)(b) cannot pass through the turnstile due to this individual's position. At 00:56, PO Hu approaches § 87(2)(b) from behind, stands directly behind him at the entrance to the turnstile, and places his right hand on § 87(2)(b) back. § 87(2)(b) turns toward PO Hu, says something inaudible, and wiggles his hands softly in front of his stomach. At 01:00 PO Hu draws his Taser and points it at the ground. At 01:06, his Taser is still drawn, and the moment when he holsters the Taser is not seen.

PO Hu reviewed the portion of PO Ahmed's BWC video capturing the moment he draws his Taser. PO Hu pointed out that § 87(2)(b) turned toward him, which made him feel threatened.

The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must "maintain a higher standard of integrity than is generally expected of others." Patrol Guide Procedure 200-02 (BR25).

While officers are generally prohibited from using profanities toward civilians, they may use profanities "in the context of a dynamic situation over which [they are] attempting to gain control," but may not do so when it "[serves] no legitimate purpose but to belittle" a civilian. DAO-DCT Disciplinary Case No. 2015-15012 (BR26).

§ 87(2)(g)  
Although § 87(2)(b) argued with the officers after they ordered him to leave the station, he was outnumbered by the officers and did not present himself in a manner that suggested he would become physically aggressive or noncompliant. PO Hu's use of the phrase "tough shit" § 87(2)(g) discourteously belittled § 87(2)(b) concern that he was being ejected from the station although he already paid his fare. § 87(2)(g)

Patrol Guide Procedure 221-02 (BR31) defines *active resistance* as "physically evasive movements to defeat [an officer's] attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody." It defines *active aggression* as a "threat or overt act of an assault (through physical or verbal means), coupled with the present ability to

carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.”

Patrol Guide Procedures 221-01 (BR30) and 221-02 (BR31) state that officers may use force when it is reasonable to ensure officers’ or civilians’ safety, or when it is reasonable to place a person in custody or to prevent escape from custody. Officers’ use of force must be reasonable under the circumstances, and de-escalation techniques, which may reduce or eliminate the need for force by gaining the subject’s voluntary compliance, must be prioritized. Officers shall “apply no more than the reasonable force necessary to gain control,” and excessive force is not tolerated. Factors to be considered in determining whether the use of force is reasonable include the following: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject; members of service or bystanders; whether the subject is actively resisting custody; whether the subject is attempting evade arrest by flight; the number of subjects in comparison to the number of members of service; size, age and condition of the subject in comparison to the member of service; subject’s violent history if known; presence of hostile crowd or agitators; and whether the subject is apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase likelihood of violence.

“A Conducted Electrical Weapon (CEW) can be an effective means of subduing aggressive suspects and emotionally disturbed persons (EDPs)... A CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present... It is prohibited to use a CEW in situations that do not require the use of physical force.” Patrol Guide Procedure 221-08 (BR24).

§ 87(2)(b) committed a non-violent violation, did not threaten officers or civilians verbally, and although upset, did not act erratically or dangerously. Although he is taller and larger than both officers, he was outnumbered by them. A civilian engaged in the situation from outside the turnstile, but there was no hostile crowd. § 87(2)(b) did not immediately comply with the officers’ orders to exit, but he eventually entered the turnstile and appeared to be leaving the station in the moments before PO Hu drew his Taser. PO Hu stated that he felt threatened when § 87(2)(b) turned toward him, but § 87(2)(b) clearly turned around in response to PO Hu touching his back. His hands and body were not positioned in a manner that suggested he posed a threat to the officers. § 87(2)(b) verbally protested being ejected from the station but did not display active resistance or active aggression at any point. § 87(2)(b) merely turning around and facing PO Hu after PO Hu touched his back. § 87(2)(g)

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#### Civilian and Officer CCRB Histories

- § 87(2)(b)  
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■ § 87(2)(b)



○ § 87(2)(b) [REDACTED]  
[REDACTED]  
■ [REDACTED]  
[REDACTED]

- Police Officer Sun Hu has been a member of service for eight years and has been a subject in four other CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g) [REDACTED]  
[REDACTED]

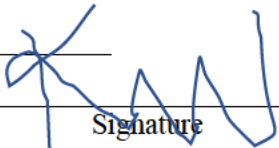
### Mediation, Civil, and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of December 19, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**BR28**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

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Squad:	13		
Investigator:		INV Katherine White	05/25/2023
	Signature	Print Title & Name	Date
Squad Leader:	JP Lozada	IM Jean-Paul Lozada	06/02/2023
	Signature	Print Title & Name	Date
Reviewer:			
	Signature	Print Title & Name	Date